

SERVICE DATE – MARCH 12, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34233

NORFOLK SOUTHERN RAILWAY COMPANY — REINSTITUTION OF SERVICE —
BETWEEN TOLEDO AND MAUMEE IN LUCAS COUNTY, OH

Decided: March 11, 2003

By petition filed on October 11, 2002, as amended on December 12, 2002, Norfolk Southern Railway Company (NSR)¹ seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to reinstitute service on a portion of the Toledo to Maumee branch line extending from milepost TM-9.3 in Toledo to milepost TM-12.5 near Maumee, a distance of approximately 3.2 miles in Lucas County, OH (the line).²

BACKGROUND

The Board exempted the abandonment of the line in STB Docket No. AB-290 (Sub-No. 196X), Norfolk and Western Railway Company — Abandonment Exemption — Between Toledo and Maumee in Lucas County, OH.³ According to NSR, the abandonment was consummated as of August 10, 1999. Nevertheless, NSR left intact the track structure, signals and other structures on the line and continued to provide local rail service to A&K Railroad Materials, Inc. (A&K). NSR has determined that, in addition to continued service to A&K, reactivation of the line will allow rerouting of traffic to the Toledo sites of Archer Daniels Midland and Art Iron, Inc.⁴ NSR states that the proposed reinstitution

¹ NSR is a wholly owned subsidiary of Norfolk Southern Corporation and corporate successor of Norfolk and Western Railway Company.

² As originally filed, NSR's petition defined the line as beginning in northern Toledo at Laskey Road (milepost TM-5.0). NSR's amended petition defines the line as beginning in central Toledo at a point just north of Vulcan (milepost TM-9.3).

³ The exemption was granted in conjunction with the railroad control application in CSX Corp. et al. — Control — Conrail Inc., et al., 3 S.T.B. 196, 351-52 (1998).

⁴ NSR states that rerouting traffic may permit the eventual abandonment of other track that could eliminate up to 17 grade crossings in the Toledo area, but NSR does not seek any abandonment authority in this proceeding.

of service will result in a maximum of 2.5 trains per day over the line based on a 5-day week. The majority of the traffic, however, will be rerouted traffic within the Toledo metropolitan area, making the actual increase in traffic .25 trains per day.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10901, our prior authorization and approval is required before a rail carrier may provide transportation over an extended or additional railroad line. Under 49 U.S.C. 10502, however, we must exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed service through an application for review and approval under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the proposed service [49 U.S.C. 10101(2)]; ensuring the continuation of a sound rail transportation system by reinstituting rail service [49 U.S.C. 10101(4)]; fostering sound economic conditions in transportation and coordination by rerouting traffic [49 U.S.C. 10101(5)]; and reducing regulatory barriers to entry into the industry [49 U.S.C. 10101(7)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed service is not necessary to protect shippers from an abuse of market power. On the contrary, the one shipper located on the line will continue to receive rail service. Nevertheless, to ensure that this shipper is informed of our action, we will require NSR to serve A&K with a copy of this decision within 5 days after the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed service is limited in scope.

Reinstitution of service is exempt from the environmental reporting requirements under 49 CFR 1105.6(c) and from historical reporting requirements under 49 CFR 1105.8(b).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10901 the reinstitution of service of the above-described line.

2. NSR shall serve a copy of this decision on A&K within 5 days after the service date of this decision and certify to us that it has done so.

3. Notice will be published in the Federal Register on March 17, 2003.

4. This decision is effective on April 16, 2003.

5. Petitions to stay must be filed by April 1, 2003. Petitions to reopen must be filed April 11, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams
Secretary